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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

SEAN MONTGOMERY,

Plaintiff and Appellant,

v.

HEATHER WARD,

Defendant and Respondent.

2d Civil No. B212625
(Super. Ct. No. FL 04-0351)
(San Luis Obispo County)

Sean Montgomery appeals from a September 30, 2008, order in which the trial court vacated its June 13, 2008, order relinquishing jurisdiction over custody and visitation issues to a court in Oklahoma. We reverse because the order was entered after the period of time permitted to vacate the order had expired.

FACTUAL AND PROCEDURAL BACKGROUND

Sean Montgomery and respondent Heather Ward¹ have a son who was born in 2002. In 2004, Montgomery established paternity of the child in San Luis Obispo Superior Court. The court also issued a domestic violence restraining order against Ward and granted Montgomery sole physical and legal custody of

¹ Heather Ward is also known by Heather Pietroforte.

the child with supervised visitation for Ward. Ward progressed from supervised to unsupervised visits and, in September 2005, the court granted joint legal custody. Montgomery retained sole physical custody.

In 2006, the court granted Montgomery's request to move to Oklahoma with the child. The court awarded Ward holiday visits in Tulare County where she was now living with another child. In 2008, Ward moved for a change of custody on the grounds that Montgomery was interfering with her telephone contact and violating provisions of the visitation order. Montgomery opposed and asked the court to relinquish jurisdiction over custody and visitation issues to an Oklahoma court, pursuant to Family Code section 3422, subdivision (a)(1). Ward moved to retain jurisdiction in San Luis Obispo County on the ground that her exercise of visitation rights in California constituted a significant connection to the state. (*Graham v. Superior Court* (2005) 132 Cal.App.4th 1193; *Allison v. Superior Court* (1979) 99 Cal.App.3d 993.)

On June 13, 2008, the San Luis Obispo Superior Court entered an order relinquishing jurisdiction over custody and visitation issues to the Oklahoma court. On the same day, the clerk served both parties with notice by mail. The court made no express findings and neither party requested a statement of decision. Ward did not move for reconsideration or seek appellate review.

Twenty-nine days later, Ward filed a motion to vacate the "judgment" pursuant to Code of Civil Procedure section 663, subdivision (1),² on the ground that it was based on incorrect legal and factual conclusions. She offered no new evidence and cited no new law.

One hundred eight days after the trial court issued the order relinquishing jurisdiction, it granted Ward's motion to vacate and entered a new order purporting to retain jurisdiction. In its written decision, the court stated that

² All statutory references are to the Code of Civil Procedure unless otherwise stated.

it was vacating the initial order based on its "re-review of the relevant law" under which it now concluded that the child's continuing visits and relationship with his mother constituted a significant connection. This appeal followed.

DISCUSSION

A judgment or order once regularly entered can be modified or vacated only as prescribed by statute. (*Eisenberg v. Superior Court* (1924) 193 Cal. 575.) Section 663 authorizes a trial court to vacate a judgment "based upon the facts already found, where improper conclusions of law had been drawn from those facts." (*Remington v. Davis* (1951) 108 Cal.App.2d 251, 253; § 663, subd. (1).)

Section 663 applies only to a judgment that is "final in nature and not one which leaves issues still to be determined." (*Remington v. Davis, supra*, 108 Cal.App.2d 251, 253.) Whether an order relinquishing jurisdiction is a final judgment for purposes of section 663 has not been decided in a reported decision. We need not resolve the question here because the motion to vacate was untimely.

A motion to vacate under section 663 must be made either before entry of judgment or within 15 days after notice of entry of judgment is mailed by the clerk or served by a party. (§ 663a, subd. (2).) Ward's motion was made 29 days after the clerk mailed notice of entry of judgment. The time limits of section 663a governing motions to vacate must be strictly enforced and may not be extended. (*Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1394; *County of Inyo v. City of Los Angeles* (1984) 160 Cal.App.3d 1178, 1183.) The trial court was without power to grant the untimely motion to vacate and its order must be reversed.

DISPOSITION

The September 30, 2008, order is reversed. The June 13, 2008, order relinquishing jurisdiction over custody and visitation issues to the District

Court of Tulsa County, Oklahoma, is reinstated. Montgomery is awarded costs on appeal.

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COFFEE, J.

We concur:

YEGAN, Acting P.J.

PERREN, J.

Gayle L. Peron, Commissioner
Superior Court County of San Luis Obispo

John F. Hodges, Edward L. Somogyi, for Plaintiff and Appellant.
Heather Ward Pietroforte, in pro. Per., Defendant and Respondent.